The Philippines

Chapter 1: Introduction

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The Republic of the Philippines (the 'Philippines') is an archipelago in Southeast Asia comprising 7,107 islands. The Philippines is geographically divided into three major island groups: Luzon, Visayas and Mindanao, and its capital city is Manila. The official languages are Filipino and English.

The Philippine legal system is a hybrid of the civil law and common law traditions, originating from the country's Spanish and American colonisation. The civil law tradition applies in areas such as family relations, property, succession, contract and criminal law. Meanwhile, principles of common law are apparent in constitutional law, procedure, corporation law, taxation, insurance, labour relations, banking and currency.

Chapter 2: The business environment

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2.1 Government structure

The Philippines is a unitary presidential constitutional republic, with the President of the Philippines acting as both the head of state and the head of government.

There are three branches of government in the Philippines: the executive branch, headed by the President; the legislative branch, composed of a bicameral Congress; and the judicial branch, headed by the Supreme Court of the Philippines.

Congress has the legislative power to make laws with respect to foreign investment. This power is limited by the 1987 Constitution of the Philippines, which states that it shall be the policy of the state to pursue an independent foreign policy. The state is also enjoined by the Constitution to protect Filipino enterprises against unfair foreign competition and trade practices.

2.2 Legal system

The primary sources of law under the Philippine legal system are the following: the Constitution, statutes, international treaties and conventions, and judicial decisions that interpret the aforementioned laws.

Chapter 3: Business and corporate structures

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3.1 Common forms of legal entities

Common forms of legal entities in the Philippines include corporations, branches of foreign corporations, partnerships, associations, joint ventures and sole proprietorships. Subject to certain limitations on foreign ownership, foreign investors are allowed to establish any of these legal entities.

The recently enacted Revised Corporation Code (RCC) also allows for the creation of a one-person corporation (OPC) with a single stockholder. However, only a natural person, trust or estate may form an OPC.

3.2 Incorporation process

The Securities and Exchange Commission (SEC) has jurisdiction and supervision over all corporations, partnerships and associations. The SEC has the power to grant franchises and give legal existence to these entities. The SEC has promulgated rules and regulations governing the incorporation process.

3.3 Ongoing reporting and disclosure obligations

All corporations must annually submit a General Information Sheet to the SEC, in the form prescribed by the SEC, within 30 calendar days from the anniversary date of the issuance of their SEC licence (for branches of foreign corporations) or within 30 calendar days from the actual annual stockholders' meeting (for domestic corporations).

In addition, all corporations must submit their audited financial statements annually to the SEC, stamped 'received' by the Bureau of Internal Revenue (BIR) or its authorised banks, unless the BIR allows an alternative proof of submission for its authorised banks (eg, bank slips). Corporations must file their audited financial statements on the dates designated by the SEC, based on the memorandum circular that the SEC issues annually.

3.4 Management structures

In the Philippines the general rule is that the board of directors exercises corporate powers, conducts all business and controls all properties of the corporation. Under the previous Corporation Code, a corporation had to have a minimum of five board members and a maximum of 15. Under the RCC, however, a corporation can have just two directors, while the maximum remains at 15.

Directors are elected for a term of one year from among the holders of stocks registered in the corporation's books. Each director is to hold office until his or her successor is elected and qualified. A director must own at least one share of stock to qualify to be a director.

Some corporations vested with public interest are required to have independent directors constituting at least 20 per cent of their board. These include, among others, banks, quasi-banks, and public and publicly listed corporations under the Securities Regulation Code (SRC).

Typically, a corporation would have a president, corporate secretary and treasurer, all voted upon by the board of directors immediately after its election. A corporation may also have other officers. The treasurer chosen must be a Philippine resident, while the corporate secretary must be a resident and citizen of the Philippines.

In an OPC the single stockholder is also the president and sole director of the corporation. Furthermore, within 15 days from its incorporation, an OPC may appoint a treasurer, corporate secretary and other officers as it may deem necessary, and notify the SEC within five days from appointment. The single stockholder must also designate a nominee and an alternate nominee who, in the event of the single stockholder's death or incapacity, is to take the place of the single stockholder as director and manage the corporation's affairs.

3.5 Director, officer and shareholder liability

Under the RCC, the directors/trustees or officers of a corporation who act within their authority and in good faith do not become personally liable for the acts of the corporation, except in the following instances:

- they vote or assent to patently unlawful acts of the corporation;
- they act in bad faith or are guilty of gross negligence in directing the affairs of the corporation;
- they have conflicting interests with the corporation, in violation of their duties as directors;
- they consent to the issuance of watered stocks, or despite having knowledge of this, do not file their written objection with the corporate secretary;
- they consent to being held personally liable; or
- by provision of law, directors are made to be liable for the acts of the corporation.

Except in instances of fraud or alter ego piercing,[1] Philippine law generally considers a corporation to have a separate and distinct personality from its shareholders. Shareholders enjoy limited liability, and are exposed to the corporation's liability only to the extent of their shareholdings.

1 Alter ego piercing is when a corporation's separate juridical personality is disregarded when a corporation is found to be an alter ego of a person or of another corporation (ie, organised, controlled and its affairs conducted so as to make it merely an instrumentality or conduit of another person or corporation), and is used to commit fraud, illegal acts or inequity against third parties.

Chapter 4: Takeovers (friendly M&A)

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The RCC states that a private corporation may invest its funds in any other corporation or business, or for any purpose other than the primary purpose for which it was organised, when approved by the majority of the board of directors or trustees and ratified by the stockholders representing at least two-thirds of the outstanding capital stock, at a meeting duly called for the purpose. Notice of the proposed investment and the time and place of the meeting is to be addressed to each stockholder at the place of residence as shown in the books of the corporation, and deposited to the addressee at a post office with postage prepaid, served personally or sent electronically in accordance with the rules and regulations of the SEC on the use of electronic data messages, when allowed by the corporation's by-laws or done with the consent of the stockholders. However, where the investment by the corporation is reasonably necessary to accomplish its primary purpose as stated in the articles of incorporation, the approval of the stockholders is not necessary. There are no board or stockholder approval requirements for the investee corporation.

As for mergers and consolidations, the RCC provides that two or more corporations may merge into a single corporation, which will be one of the constituent corporations, or may consolidate into a new single corporation, which will be the consolidated corporation.

The board of directors of each corporation, and party to the merger or consolidation, must first approve the plan of the merger or consolidation, setting forth:

- the names of the corporations proposing to merge or consolidate, referred to as the 'constituent corporations';
- the terms of the merger or consolidation and the mode of carrying it into effect;
- a statement of the changes, if any, in the articles of incorporation of the surviving corporation in the case of a merger; and, in the case of consolidation, all the statements required to be set forth in the articles of incorporation under the RCC; and
- any other provision with respect to the proposed merger or consolidation as are deemed necessary or desirable.

Upon approval of the merger or consolidation plan by the majority vote of each of the board of directors of the constituent corporations, the plan will be submitted for approval by the stockholders of each corporation at separate corporate meetings duly called for the purpose. Notice of the meetings must be given to all stockholders of the respective corporations. The notice shall state the purpose of the meeting and include a copy or summary of the plan of the merger or consolidation.

The affirmative vote of stockholders representing at least two-thirds of the outstanding capital stock of each corporation is necessary for the approval of the plan.

After receiving approval from the stockholders, articles of merger or articles of consolidation will be executed by each of the constituent corporations, to be signed by the president or vice-president and certified by the secretary or assistant secretary of each corporation, setting forth:

- the plan of the merger or the plan of consolidation;
- the number of shares outstanding;
- for each corporation, the number of shares or members voting for or against the plan, respectively;
- the carrying amounts and fair values of the assets and liabilities of the respective companies as of the agreed cut-off date;
- the method to be used in the merger or consolidation of accounts of the companies;
- the provisional or *pro forma* values, as merged or consolidated, using the accounting method; and
- other information as may be prescribed by the SEC.

The articles of merger or consolidation, signed and certified, are then submitted to the SEC for its approval. However, in the case of the merger or consolidation of banks or banking institutions, loan associations, trust companies, insurance companies, public utilities, educational institutions and other special corporations governed by special laws, the favourable recommendation of the appropriate government agency must first be obtained.

If the SEC is satisfied that the merger or consolidation of the corporations concerned is consistent with the provisions of the RCC and existing laws, it will issue a certificate approving the articles and plan of the merger or consolidation, at which time the merger or consolidation will be effective.

Where the entity to be acquired is a listed company, certain rules regarding tender offers apply under the SRC and its implementing rules:

- Any person or group of persons acting in concert, who intends to acquire 15 per cent of equity securities in a public company in one or more transactions within a period of 12 months, must file a declaration to that effect with the SEC.
- Any person or group of persons acting in concert, who intends to acquire 35 per cent of the outstanding voting shares or such outstanding voting shares that are sufficient to gain control of the board in a public company in one or more transactions within a period of 12 months, must disclose such an intention and contemporaneously make a tender offer for the percentage sought to all holders of such securities within the said period. If the tender offer is oversubscribed, the aggregate number of securities to be acquired at the close of such tender offer must be proportionately distributed across selling shareholders with whom the acquirer may have been in private negotiations, and other shareholders. For the purposes of the rules of the SRC, the last sale that meets the threshold must not be consummated until the closing and completion of the tender offer.

- Any person or group of persons acting in concert, who intends to acquire 35 per cent of the outstanding voting shares or such outstanding voting shares that are sufficient to gain control of the board in a public company through the Philippine Stock Exchange (the 'Exchange') is not required to make a tender offer, even if such a person or group of persons acting in concert acquire the remainder through a block sale if, after acquisition through the Exchange trading system, they fail to acquire the target of 35 per cent or such outstanding voting shares that are sufficient to gain control of the board.
- Any person or group of persons acting in concert, who intends to acquire 35 per cent of the outstanding voting shares or such outstanding voting shares that are sufficient to gain control of the board in a public company directly from one or more stockholders is required to make a tender offer for all the outstanding voting shares. The sale of shares pursuant to the private transaction or block sale must not be completed prior to the closing and completion of the tender offer.
- If any acquisition would result in ownership of over 50 per cent of the total outstanding equity securities of a public company, the acquirer is required to make a tender offer under the rules of the SRC for all the outstanding equity securities to all remaining stockholders of the said company at a price supported by a fairness opinion provided by an independent financial adviser or equivalent third party. The acquirer in such a tender offer is required to accept all securities tendered.

Chapter 5: Foreign investment

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5.1 Foreign investment control/restriction

The Foreign Investments Act classifies industries into the following: nationalised industries (no foreign ownership is allowed), partially nationalised industries (foreign ownership is limited or subject to certain ceilings) and liberalised industries (may be 100 per cent owned by foreign investors).

Nationalised industries include the following:

- mass media;
- retail trade (where paid-up capital is less than US$2.5m);
- cooperatives;
- small-scale mining;
- utilisation of marine resources;

- ownership, operation and management of a cockpit; and manufacture, repair, stockpiling and/or distribution of biological, chemical, radiological and nuclear weapons, and anti-personnel mines; and
- manufacture of pyrotechnic devices.

Partially nationalised industries include, but are not limited to:

- private radio communications network (limited to 20 per cent foreign ownership);
- private recruitment (limited to 25 per cent foreign ownership);
- contracts for the construction and repair of locally funded public works, except: (1) infrastructure and development projects covered by Republic Act No 7718 or the Build–Operate–Transfer Law; and (2) projects that are foreign-funded or assisted and required to undergo international competitive bidding (limited to 25 per cent foreign ownership);
- contracts for the construction of defence-related structures (limited to 25 per cent foreign ownership);
- advertising (limited to 30 per cent foreign ownership);
- exploration, development and utilisation of natural resources (limited to 40 per cent foreign ownership);
- ownership of private land (limited to 40 per cent foreign ownership);
- operation and management of public utilities (limited to 40 per cent foreign ownership);
- educational institutions (other than those established by religious groups and mission boards) (limited to 40 per cent foreign ownership);
- culture, production, milling, processing and trading, except retailing, of rice and corn, and acquiring rice, corn and their by-products (limited to 40 per cent foreign ownership);
- contracts for the supply of materials, goods and commodities to state-owned and municipal corporations (limited to 40 per cent foreign ownership);
- facility operator of an infrastructure or development facility requiring a public utility franchise (limited to 40 per cent foreign ownership);
- operation of deep-sea commercial fishing vessels (limited to 40 per cent foreign ownership);
- adjustment companies (limited to 40 per cent foreign ownership);
- ownership of condominium units (limited to 40 per cent foreign ownership);
- project proponents and facility operator of a build–operate–transfer project requiring a public utilities franchise (limited to 40 per cent foreign ownership);
- all forms of gambling, except those covered by investment agreements with the Philippine Amusement and Gaming Corporation operating within special economic zones (SEZs) administered by the Philippines Economic Zone Authority (PEZA) (limited to 40 per cent foreign ownership);

- domestic market enterprises (ie, enterprises that produce goods or render services to the domestic market entirely or export less than 60 per cent of their output) with paid-in capital of less than US$200,000 (limited to 40 per cent foreign ownership); and
- domestic market enterprises that involve advanced technology or employ at least 50 employees with paid-in capital of less than US$100,000.

It should also be noted that only citizens of the Philippines or corporations owned by at least 60 per cent Filipinos are allowed to own land in the Philippines.

5.2 Foreign exchange control

The Central Bank of the Philippines (Bangko Sentral ng Pilipinas – BSP) is the central monetary authority of the Philippines. It is the entity that regulates the injection and repatriation of foreign exchange in the Philippines. The Manual of Regulations on Foreign Exchange Transactions (the 'ForEx Manual') issued by the BSP consolidates the rules governing foreign exchange transactions. In summary, foreign investors consider the following in dealing with foreign exchange transactions in the Philippines:

- Investments in foreign currency need not be registered with the BSP, as long as no foreign currency will be sourced from the Philippine banking system for the purpose of repatriating funds.
- Portfolio investments (eg, peso-denominated securities issued onshore by the national government and other public sector entities; securities of resident enterprises listed at the Exchange; peso time deposits with a local bank with a maturity of at least 90 days; and other peso-denominated debt instruments issued onshore by private resident and that do not constitute loans requiring BSP approval under the ForEx Manual) must be registered with the BSP.
- Applications for the registration of foreign currency funding for FDI must be filed with the BSP within one year from the date of inward remittance to the Philippines.

5.3 Applicable tax incentive or grant

The fiscal incentives granted to foreign investors depend on the industry and the type of vehicle that the foreign investor invests in, which can fall under incentive regimes established by the following laws:

- Executive Order No 226, as amended, or the Omnibus Investments Code, by registering with the Board of Investments (BOI), that is, by becoming a BOI-Registered Enterprise, or by establishing a regional or area headquarters (RHQ) or regional operating headquarters (ROHQ);
- Republic Act No 7916, as amended, or the SEZ Act, by registering with the PEZA and locating in a PEZA Economic Zone;
- Republic Act No 7903 by locating in the Zamboanga City SEZ; Republic Act No 7922 by locating in the Cagayan SEZ; Republic Act No 9490, as amended by Republic Act No 10083, by locating in the Aurora Pacific Economic and Freeport Zone; and Republic Act No 9728 by locating in the Freeport Area of Bataan;

- Republic Act No 7227, as amended, or the Bases Conversion and Development Act, by locating in the Subic Bay SEZ; the Clark SEZ; the John Hay SEZ; or the Poro Point Freeport Zone;
- Republic Act No 9593, or the Tourism Act, by registering with the Tourism Infrastructure and Enterprise Zone Authority and locating in a Tourism Enterprise Zone;
- Republic Act No 7844, or the Export Development Act, by registering with the Export Development Authority;
- Republic Act No 8756, or the RHQ, ROHQ and Regional Warehouses Act, by registering with the SEC upon favourable recommendation of the BOI; and
- other special laws that create SEZs or that grant incentives for certain priority industries.

Chapter 6: Restructuring and insolvency

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Republic Act No 10142, or the Financial Rehabilitation and Insolvency Act (FRIA), generally covers insolvent corporations or individuals and provides procedures for liquidation and rehabilitation. These include methods to restructure liabilities, including court-supervised or pre-negotiated rehabilitation, out-of-court informal restructuring agreements or rehabilitation plans, and suspension of payments. The FRIA also expressly adopts the UNCITRAL Model Law on Cross-Border Insolvency, which allows for the recognition of foreign insolvency proceedings, subject to section 136 (on the liquidation of securities market participants), and rules of procedure to be adopted by the Supreme Court. Note that insolvent banks, insurance companies and pre-need companies are covered by Republic Act No 7653 ('New Central Bank Act'), Presidential Decree No 1460 ('Insurance Code') and Republic Act No 9829 ('Pre-Need Code'), respectively, with the FRIA only applying in supplement.

6.1 Court-supervised rehabilitation

Under the FRIA, court-supervised rehabilitation can be voluntary or involuntary.

Voluntary court-supervised rehabilitation may be initiated by the debtor through a verified petition, with the approval of the owner in the case of a sole proprietorship; an approval by the majority vote of the partners in the case of a partnership; or an approval by the majority vote of the board of directors or trustees, with authority from the stockholders or members representing at least two-thirds of the outstanding capital stock or members, in a meeting duly called for the purpose. A group of debtors may jointly file a petition for rehabilitation in cases where one or more of its members foresee the impossibility of meeting debts as they fall due; the financial distress would be likely to adversely affect the financial condition and/or operations of the other members; and/or the participation of the other members of the group is essential under the terms and conditions of the proposed rehabilitation plan.

Involuntary court-supervised rehabilitation may be initiated by any creditor or group of creditors with an aggregate claim of at least PHP 1m or at least 25 per cent of the subscribed capital stock or partners' contribution, whichever is higher, by filing a verified petition for rehabilitation based on the following grounds: (1) there is no genuine issue of fact or law on the claims of the creditors, and the due and demandable payments were not made for at least 60 days, or the debtor has failed to meet liabilities as they fall due; or (2) a creditor, other than the petitioner(s), initiated foreclosure proceedings against the debtor that will prevent it from paying its debts as they become due or render it insolvent.

In both voluntary and involuntary rehabilitation, the petition must establish the debtor's insolvency and the viability of its rehabilitation, provide a rehabilitation plan and nominate at least three persons as rehabilitation receivers.

Should the petition be deemed sufficient in form and substance, the rehabilitation court will issue a Commencement Order, the effects of which generally retroact to the Commencement Date (which is, effectively, the date of filing of the petition). The Commencement Order has the following effects, among others:

- prohibits the debtor's suppliers from withholding the supply of goods and services in the ordinary course of business for as long as the debtor pays for them;
- authorises the payment of administrative expenses (these include expenses incurred in the ordinary course of business, such as compensation for employees, or those reasonable and necessary fees for filing the petition, conducting the rehabilitation proceeding, compensating the rehabilitation receiver and paying new obligations after the Commencement Date);
- serves as legal basis to annul the following: (1) the result of an extrajudicial process to seize property, sell encumbered property, or otherwise attempt to collect or enforce a claim against the debtor after the Commencement Date; and (2) any set-off of any debt owed to the debtor by any of the debtor's creditors after the Commencement Date;
- consolidates the resolution of all legal proceedings by and against the debtor to the rehabilitation court, provided that cases in other courts may be allowed to continue therein where the debtor initiated the suit;
- considers as waived the imposition of all taxes and fees, including penalties, interest and charges by national or local governments, from the issuance of the Commencement Order until the approval of the rehabilitation plan or dismissal of the petition; and
- incorporates a Stay Order that shall: (1) suspend all actions or proceedings, in court or otherwise, for the enforcement of claims against the debtor; (2) suspend all actions to enforce any judgment, attachment or other provisional remedies against the debtor; (3) prohibit the debtor from selling, encumbering, transferring or disposing in any manner of its properties, except in the ordinary course of business; and (4) prohibit the debtor from paying its outstanding liabilities as of the Commencement Date, except as may be provided by the FRIA.

Management and control during the rehabilitation proceedings would remain with the existing management of the debtor, unless the rehabilitation receiver is appointed to take over under section 36 of the FRIA, or the rehabilitation receiver and the rehabilitation court approve the creation of a management committee.

During rehabilitation, all disbursements, payments for sale, disposal, assignment, transfer or encumbrance of property, or any other act affecting title to or interest in property shall be subject to the recommendation/approval of the rehabilitation receiver or rehabilitation court. These dispositions include:

- sale of unencumbered property outside the ordinary course of business by reason of their perishable nature, costliness to maintain or susceptibility to devaluation;
- sale, transfer, conveyance or disposal of encumbered property with the consent of the property owners or secured creditors, when it is determined, after notice and hearing, that such a disposition is necessary for the continued operation of the debtor's business, and the debtor made arrangements to provide a substitute lien or ownership right with an equivalent level of security to a counter-party's claim or right;
- disposition of property pursuant to possessory pledges, mechanic's lien or similar claims;
- sale of assets subject to rapid obsolescence , the depreciation of which cannot be avoided and would jeopardise the security interest of a secured creditor; and
- credit arrangements entered into after the Commencement Date.

In the event that the rehabilitation court gives due course to the petition, the rehabilitation receiver shall confer with the debtor and all classes of creditors to consider their views and proposals in reviewing, revising or preparing a new rehabilitation plan.

The creditors shall be notified of the availability of the rehabilitation plan for examination. The rehabilitation receiver shall then convene the creditors as a whole, or per class, within 20 days from such a notice, to vote on the rehabilitation plan. The rehabilitation plan shall be deemed approved by *a class* of creditors if members holding 50 per cent of the total claims of such a class vote in favour of the rehabilitation plan. The rehabilitation plan shall be deemed rejected unless approved by *all classes* of creditors whose rights are adversely modified or affected by it. Note that the votes of the creditors are based on the amount of their respective claims in the registry of claims prepared by the rehabilitation receiver.

Assuming the rehabilitation plan is rejected, the rehabilitation court may still confirm it through its 'cram-down power', if: (1) it complies with the FRIA; (2) the rehabilitation receiver recommends its confirmation; (3) the shareholders, owners or partners of the debtor lose at least their controlling interest as a result of the said rehabilitation plan; and (4) it would be likely to provide the objecting class of creditors with compensation that has a net present value greater than what they would receive under liquidation.

Rehabilitation proceedings are terminated upon a motion by any stakeholder or the rehabilitation receiver through the declaration of the successful implementation of a rehabilitation plan or a failure of rehabilitation. There is failure of rehabilitation if: (1) the petition is dismissed; (2) the debtor fails to submit a rehabilitation plan; (3) there is no substantial likelihood that the debtor can be rehabilitated within a reasonable period; (4) the rehabilitation plan or its amendment is approved, but the debtor fails to perform its obligations thereunder, or the objectives, targets, goals, timelines and conditions for settlement of obligations are not met or realised; (5) there is fraud in securing the approval of the rehabilitation plan; and/or (6) other analogous circumstances.

6.2 Liquidation

Liquidation under the FRIA can either be voluntary or involuntary.

Voluntary liquidation can be initiated by a debtor through a verified petition for liquidation. At any time during the pendency of court-supervised or pre-negotiated rehabilitation proceedings, the debtor may also initiate liquidation proceedings by filing a verified motion in the same court where the said proceedings are pending to convert them into liquidation proceedings. The petition or motion must include an inventory of the debtor's assets and nominees for liquidator.

Involuntary liquidation can be initiated through a verified petition for liquidation by three or more creditors whose aggregate claim is either at least PHP 1m or at least 25 per cent of the subscribed capital stock or partner's contributions of the debtor, whichever is higher. The petition must show that: (1) there is no genuine issue of fact or law on the claims(s) of the petitioner(s) and that the due and demandable payments thereon have not been made for at least 180 days, or that the debtor has failed generally to meet its liabilities as they fall due; and (2) there is no substantial likelihood that the debtor may be rehabilitated. At any time during the pendency of or after a court-supervised or pre-negotiated rehabilitation proceedings, three or more creditors whose claim is either at least PHP 1m or at least 25 per cent of the subscribed capital or partner's contributions of the debtor, whichever is higher, may also initiate liquidation proceedings by filing a verified motion in the same court where the said proceedings are pending to convert them into liquidation proceedings.

If the court finds the petition for liquidation sufficient in form and substance, it shall issue a liquidation order, which shall:

- direct the sheriff to take possession and control of the debtor's properties, except those exempt from execution;
- direct payments of any claims and conveyance of any property due the debtor to the liquidator;
- prohibit payments by the debtor and transfer of any property;
- direct all creditors to file their claims with the liquidator within the applicable periods; and
- authorise the payment of administrative expenses as they become due.

The liquidation order shall also have the following effects:

- the juridical debtor shall be deemed dissolved and its corporate or juridical existence terminated;

- legal title to and control all of the debtor's assets, except those exempt from execution, shall be deemed vested in the liquidator or, pending his or her election or appointment, with the court;
- all contracts of the debtor shall be deemed terminated and/or breached, unless the liquidator, within 90 days from the date of his or her assumption of office, declares otherwise and the contracting party agrees;
- no separate action for the collection of an unsecured claim shall be allowed, and actions already pending will be transferred to the liquidator for him or her to accept and settle or contest. If the liquidator contests or disputes the claim, the court shall allow, hear and resolve such a contest, except when the case is already on appeal, in which case the suit may proceed to judgment, and any final and executory judgment thereon for a claim against the debtor shall be filed and allowed in court; and
- no foreclosure proceeding shall be allowed for a period of 180 days.

The liquidator shall submit to the liquidation court a liquidation plan within three months from assumption of office. The liquidation plan shall abide by the following principles, among others:

- The plan shall enumerate all assets of the debtor and schedule a liquidation thereof and payment of claims. Properties exempt from execution shall be set apart.
- The liquidator may sell unencumbered assets of the debtor in a public auction and convert them into money. However, a private sale may be allowed with approval of the court, if: (1) the goods are of a perishable nature, liable to quick deterioration in value, or disproportionately expensive to keep or maintain; or (2) it is in the best interest of the debtor and creditors.
- It shall ensure the concurrence and preference of credits under the Civil Code of the Philippines.

Chapter 7: Employment, industrial relations, and work health and safety

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7.1 Employees' rights and protection

The Philippine Constitution guarantees security of tenure, humane conditions of work and a living wage for workers. Presidential Decree No 442, as amended, or the Labor Code of the Philippines, provides that an employee may only be terminated by the employer for just and authorised causes that must comply with the procedural due process requirements mandated by law. Otherwise, the termination may be deemed illegal, which shall make the employer liable for backwages, damages and separation pay if reinstatement is no longer feasible.

The following are just causes for termination:

- serious misconduct or wilful disobedience;
- gross and habitual neglect of duties;
- fraud or wilful breach of trust;
- loss of confidence;
- commission of a crime or offence by the employee against his or her employer, the employer's immediate family or his or her duly authorised representatives; and
- other causes analogous to the foregoing.

In termination for just cause, due process involves the two-notice rule:

- a written notice of intent to dismiss specifying the ground for termination and a detailed narration of facts and circumstances that serve as a basis for the charge, and giving said employee reasonable opportunity (five calendar days from the receipt of the notice) within which to explain his or her side;
- a hearing or conference in which the employee is given an opportunity to respond to the charge, present evidence or rebut the evidence presented against him or her; and
- a notice of dismissal indicating that, upon due consideration of all the circumstances, grounds have been established to justify termination.

The following are the authorised causes for termination:

- installation of labour-saving devices;
- redundancy;
- retrenchment to prevent losses;
- closure or cessation of business; and
- a disease not curable within six months, as certified by a competent public authority, and when the continued employment of the employee is prejudicial to his or her health or to the health of his or her colleagues.

In a termination for an authorised cause, due process means a written notice of dismissal to the employee and the Department of Labor and Employment specifying the grounds at least 30 calendar days before the date of termination.

In addition, an employee terminated based on an authorised cause is entitled to separation pay, except when the termination is due to closure or cessation of business operation due to serious business losses.

For termination due to redundancy and implementation of labour saving-devices, the employee shall be paid by the employer separation pay equivalent to at least one month's pay or at least one month's pay for every year of service, whichever is higher; a fraction of at least six months service is considered as one whole year.

For termination due to retrenchment, cessation of business operation not due to serious business losses, or disease, the employee shall be paid by the employer separation pay equivalent to at least one month's pay or at least half a month's pay for every year of service, whichever is higher; a fraction of at least six months service is considered as one whole year.

Republic Act No 11058 ensures a safe and healthful workplace for all workers and requires employers to equip the workplace so that it is free from hazardous conditions that are likely to cause death, illness or physical harm to the workers, among other requirements.

The Philippine Constitution also guarantees the rights of all workers to self-organisation, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law.

7.2 Statutory contributions and minimum wage

Employers are required to pay their employees at least the minimum wage required by law. Under the most recent wage order (Wage Order No 22), the minimum gross basis wage for employees in the National Capital Region (Metro Manila) is PHP 37 per day.

The following laws require mandatory employer contributions to a state fund from which employees may claim applicable benefits:

- Republic Act No 8282, or the Social Security Law;
- Republic Act No 7875, as amended, or the National Health Insurance Act; and
- Republic Act No 9679, or the Pag-Ibig Fund.

7.3 Work permits

Foreign nationals who intend to engage in gainful employment in the Philippines must obtain an Alien Employment Permit from the Department of Labor and Employment, and a work visa or 9(g) visa from the Philippine Bureau of Immigration.

During the pendency of an application for a 9(g) visa, a Provisional Work Permit valid for three months may be applied to allow the foreign national to commence employment.

For short-term assignments of up to six months, a foreign national may obtain a Special Working Permit from the Philippine Bureau of Immigration.

Chapter 8: Tax law

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8.1 Taxes applicable to individuals

An individual taxpayer is subject to the following income taxes:

8.1.1 Graduated income tax rates

Tax schedule effective 1 January 2018 until 31 December 2022:

Under PHP 250,000	0%
Over PHP 250,000 but under PHP 400,000	20% of the excess over PHP 250,000
Over PHP 400,000 but under PHP 800,000	PHP 30,000 + 25% of the excess over PHP 400,000
Over PHP 800,000 but under PHP 2,000,000	PHP 130,000 + 30% of the excess over PHP 800,000
Over PHP 2,000,000 but under PHP 8,000,000	PHP 490,000 + 32% of the excess over PHP 2,000,000
Over PHP 8,000,000	PHP 2,410,000 + 35% of the excess over PHP 8,000,000

Tax schedule effective 1 January 2023 onwards:

Under PHP 250,000	0%
Over P250,000 but under PHP 400,000	15% of the excess over PHP 250,000
Over PHP 400,000 but under PHP 800,000	PHP 22,500 + 20% of the excess over PHP 400,000
Over PHP 800,000 but under PHP 2,000,000	PHP 102,500 + 25% of the excess over PHP 800,000
Over PHP 2,000,000 but under PHP 8,000,000	PHP 402,500 + 30% of the excess over PHP 2,000,000
Over PHP 8,000,000	PHP 2,202,500 + 35% of the excess over PHP 8,000,000

The compensation of an employee is subject to creditable WHT using the graduated income tax rates. The employer shall act as the withholding agent for the compensation who must deduct the WHT prior to payment of the compensation, as well as remit the taxes withheld to the BIR.

8.1.2 Self-employed individuals

Self-employed individuals and/or professionals have the option to avail of an eight per cent tax on gross sales or gross receipts and other non-operating income in excess of PHP 250,000 in lieu of the graduated income tax rates and the percentage tax.

8.1.3 Individuals earning income from both compensation income and from self-employment

Taxpayers earning both compensation income and income from business or practice of profession shall be subject to the following taxes:

- all income from compensation: graduated income tax rates; and
- all income from business or practice of profession:
  - if total gross sales and/or gross receipts and other non-operating income do not exceed the VAT threshold: the graduated rates prescribed on taxable income or eight per cent income tax based on gross sales or gross receipts and other non-operating income in lieu of the graduated income tax rates and the percentage tax; and
  - if total gross sales and/or gross receipts and other non-operating income exceeds the VAT threshold: the graduated income tax rates.

8.2 Taxes applicable to businesses

The taxes applicable to businesses depend on the type of business entity.

8.2.1 Domestic corporation

A domestic corporation shall be taxable on income derived from sources within and outside the Philippines. Among the principal taxes imposed on a domestic corporation are:

- corporate income tax at a rate of 30 per cent of its net taxable income;
- the minimum corporate income tax of two per cent of the gross income as in the case of a branch office;
- tax on certain passive income;
- VAT at a rate of 12 per cent of its gross receipts from its sales of goods and/or services in the course of trade or business, and 12 per cent of the value of the goods from its importation of goods; and
- local taxes, fees and charges imposed by the appropriate local government unit (ie, province, municipality, city or *barangay*), subject to guidelines and limitations provided by Congress, which normally include business, community and real property taxes.

8.2.2 Branch office

A branch office is considered a resident foreign corporation and shall be taxable only on income derived from sources within the Philippines. It shall be liable for the following taxes:

- corporate income tax at a rate of 30 per cent of its net taxable income;
- a minimum corporate income tax of two per cent of the gross income as of the end of the taxable year beginning on the fourth taxable year immediately following the year in which the

corporation commenced its business operations, when the minimum income tax is greater than the tax computed in accordance with the specified formula;

- tax on branch profit remittances at a rate of 15 per cent upon any profit remitted by an ROHQ to its parent company based on the total profits applied or earmarked for remittance without any deduction for the tax component thereof (except those activities registered with the PEZA);
- tax on certain passive income;
- VAT at a rate of 12 per cent of its gross receipts from its sales of goods and/or services in the course of trade or business, and 12 per cent of the value of the goods from its importation of goods; and
- local taxes, fees and charges imposed by the appropriate local government unit (ie, province, municipality, city or *barangay*), subject to guidelines and limitations provided by Congress, which normally include business, community and real property taxes.

8.2.3 Representative office

A representative office is not subject to income tax and is exempt from filing a corporate income tax return. However, a representative office is required to deduct, withhold and remit to the BIR income taxes due on the salaries of its employees. Likewise, a representative office is required to secure its Taxpayer's Identification Number from the BIR.

8.2.4 Regional or area headquarters

A RHQ is not subject to income tax. Further, it is exempt from VAT and all kinds of local taxes, fees or charges imposed by a local government unit, except real property tax on land improvement and equipment. However, it is required to submit an annual information return of a tax-exempt corporation. A RHQ also enjoys tax and duty-free importation of equipment and materials for training and conferences needed and used solely for its functions as a RHQ and not locally available subject to the prior approval of the BOI.

8.2.5 Regional operating headquarters

A ROHQ is taxable only on income derived from sources within the Philippines and subject to the following taxes:

- corporate income tax at a rate of ten per cent of its net taxable income;
- tax on branch profits remittance at a rate of 15 per cent upon any profit remitted by a ROHQ to its parent company based on the total profits applied or earmarked for remittance without any deduction for the tax component thereof (except those activities registered with the PEZA);
- tax on certain passive income; and
- VAT at a rate of 12 per cent of its gross receipts from sales of goods and/or services in the course of trade or business, and 12 per cent of the value of the goods from its importation of goods, except the importation of equipment and materials for training and conferences needed for ROHQ functions.

A ROHQ is exempt from all kinds of local taxes, fees or charges imposed by a local government unit, except real property tax on land improvement and equipment. A ROHQ also enjoys tax and duty-free importation of equipment and materials for training and conferences needed and used solely for its functions as a ROHQ and not locally available subject to the prior approval of the BOI.

8.3 Other taxes

8.3.1 Final withholding tax

Final withholding tax (FWT) is a tax on passive income, and constitutes a full and final payment of the income tax due. The payee is not required to file an income tax return for the particular income subject to FWT, as the liability for the payment of tax rests primarily on the payor as the withholding agent. The following are types of income subject to FWT:

- interest;
- royalties;
- rent;
- dividends; and
- capital gains on the sale of real property.

Generally, the FWT rates for interest and royalties are as follows:

- 20 per cent if the income recipient is a domestic/resident foreign corporation, citizen, resident foreign national or non-resident foreign national engaged in business in the Philippines;
- 25 per cent for a non-resident foreign national not engaged in business in the Philippines; and
- 30 per cent for a non-resident foreign corporation, subject to preferential rates under applicable tax treaties.

Rentals from sources within the Philippines paid to a non-resident foreign corporation are subject to 30 per cent FWT.

Dividends received by one domestic corporation from another are not subject to tax, while those received by a non-resident foreign corporation are subject to 30 per cent FWT, subject to preferential rates under applicable tax treaties.

8.3.2 Capital Gains Tax

CGT is a tax imposed on the gains presumed to have been realised by the seller from the sale, exchange or other disposition of capital assets located in the Philippines. The sale of real property is generally subject to six per cent CGT. The sale of shares not listed in the stock exchange is subject to 15 per cent CGT if the seller is an individual or domestic corporation. If the seller is a non-resident foreign corporation, the sale of shares not traded in the stock exchange are subject to CGT of five per cent on the net capital gains not exceeding PHP 100,000 plus ten per cent on any amount in excess of PHP 100,000.

8.3.3 Documentary stamp tax

Documentary stamp tax (DST) is an excise tax levied on documents, instruments, loan agreements and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident. The amount of tax is either fixed or based on the par or face value of the document or instrument. The tax is paid by the person making, signing, issuing, accepting or transferring the documents. However, whenever one party to the taxable document enjoys exemption from the tax, the other party who is not exempt is directly liable for the tax. The DST is payable on or before the fifth day of the month following the month when the document was executed.

8.3.4 VAT

VAT is a tax on consumption levied on the sale, barter, exchange or lease of goods or properties and services in the Philippines and on the importation of goods into the Philippines. The current VAT rate is 12 per cent on the purchase price or consideration. It is an indirect tax, which may be shifted or passed on to the buyer, transferee or lessee of goods, properties or services. Any person or entity who, in the course of trade or business, sells, barters, exchanges or leases goods or properties and renders services subject to VAT, if the aggregate amount of annual gross sales or receipts exceeds PHP 3m, shall be required to file and pay VAT.

8.3.5 Donor's tax

Donor's tax is a tax upon the transfer by any person, resident or non-resident of property as a gift. The tax for each calendar year shall be six per cent computed on the basis of the total gifts in excess of PHP 250,000 excluding the gift made during the calendar year. In the case of transfers of property for less than an adequate and full consideration, the amount by which the fair market value of the property exceeds the value of the consideration shall be deemed a gift subject to donor's tax, except if the transfer was made in the ordinary course of business (a transaction that is bona fide, at arm's length[2] and free from any donative intent).

Chapter 9: Intellectual property

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9.1 Patents

The Philippine legal system provides protection for inventions, utility models and industrial designs. The basis for protection is primarily statutory law, particularly Republic Act No 8293 or the Intellectual Property Code of the Philippines, as amended, and its implementing rules and regulations. In addition, Republic Act No 9502 or the Universally Accessible Cheaper and Quality Medicines Act, and Republic Act No 9150 or An Act Providing for the Protection of Layout-Designs

2 The arm's length principle is an internationally recognised standard for transfer pricing between associated enterprises. The arm's length principle requires the transaction with a related party to be made under conditions and circumstances comparable to a transaction with an independent party.

(‘Topographies’) of Integrated Circuits, which amended some provisions of the Intellectual Property Code, may also be referred to. Rights under applicable statutes are further developed by case law.

The Philippines is also a contracting party to the PCT, which provides additional rights to member states, such as the possibility of seeking patent protection for an invention or utility model (if the contracting state provides utility model protection) simultaneously in the contracting states by filing one initial application and subsequently entering into national phase entry applications for selected countries.

The procedure and requirements for the grant of a patent for an invention differs from that of a utility model. As in most jurisdictions, invention patents must comply with the requirements of novelty, inventiveness and industrial applicability. On the other hand, the requirement of inventiveness is dispensed with for utility models. In terms of the patent grant procedure, the examination of an application for an invention patent is more stringent than that for a utility model.

Upon filing a patent application for an invention, the application will undergo a formal examination wherein the required documents are checked. The results of this examination are issued by the Intellectual Property Office of the Philippines (IPOPHL) approximately three months from the filing date of the application. Once the formal examination has cleared, a National Phase Entry Application Report (NPEAR) is issued by the IPOPHL, indicating that all the required documents have been filed and the application is complete. Otherwise, the IPOPHL will issue an NPEAR indicating the documents that have yet to be submitted or matters that need to be clarified by the applicant.

After passing the formal examination, a patent examiner for substantive examination will be assigned to the application. It takes approximately three years from the filing date of a patent application for its substantive examination to be completed. However, due to enhancements in manpower currently under way in the IPOPHL, this period is expected to be significantly reduced.

During a substantive examination, the Patent Examiner checks for possible issues in the application, mainly regarding the clarity of the submitted disclosures and novelty and/or inventiveness of the claims covering the invention. Thereafter, office actions may be issued by the Patent Examiner and the applicant must file its responses within a period of two months. Upon the filing of a request with good and sufficient cause, and payment of the corresponding fees within the initial period to file the response, the deadline to respond may be extended for a maximum of two extensions, provided that the aggregate period inclusive of the initial period allowed to file the response shall not exceed six months from the mailing date of the official action. A substantive examination takes approximately two years and depends on the complexity of the issues in question, as well as the speed by which the applicant responds to the objections.

If the Patent Examiner decides that the application may be published, the IPOPHIL issues a Notice of Allowance and the application is published. A Notice of Issuance of Letters of Patent Certificate will then be issued once the Letters Patent are ready.

Similar to patents, once an application for a utility model or industrial design is filed, it undergoes a formal examination whereby the required documents are checked for completeness. A report is then issued to the applicant or its agent indicating that all required documents have been filed and the application is complete. Otherwise, the IPOPHL will issue a report indicating the documents still to be submitted or matters that need to be clarified by the applicant.

If no further issues are found in the formal examination, the application is published. After 30 days from publication, the allowance of the application for registration ensues and the Certificate of Registration is issued. This registration of a utility model or industrial design is published in the IPOPHL Gazette.

In terms of the timeframe for patent applications to be granted protection, invention patents are usually granted approximately five years from the filing date, depending on the complexity of the application, the number of claims, the speed with which the applicant responds to each office action of the IPOPHL and whether or not voluntary amendments are filed by the applicant. For utility models and industrial designs, registration may be obtained within approximately nine months from the filing date.

Invention patents have a validity of 20 years from the filing date. However, for PCT applications, the term of protection is reckoned from the international filing date. For utility models, the term of protection is seven years from the filing of the application. The term of protection for invention patents and utility models is not subject to renewal.

Part of the maintenance requirements of an invention patent is the payment of annual fees, starting four years from the date the application is published. There is no such requirement for utility models and industrial designs.

9.2 Trademarks

The primary legislation governing trademarks in the Philippines is the Intellectual Property Code. In addition to domestic legislation, the Philippines is a party to the following international trademark agreements:

- the Agreement on Trade-Related Aspects of Intellectual Property Rights (the 'TRIPS Agreement');
- the Paris Convention for the Protection of Industrial Property; and
- the Madrid Protocol.

The Intellectual Property Code defines a 'trademark' as any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise, including a stamped or marked container of goods. From the definition of a trademark in the Philippines, it seems apparent that this jurisdiction does not accord protection marks not perceptible to the human eye.

A trademark is unregistrable in the Philippines if it falls under any of the absolute or relative grounds for refusal under section 123 of the Intellectual Property Code. Absolute grounds include immoral, generic, descriptive, non-distinctive or customary marks, while relative grounds cover confusing similarity with previously registered or earlier filed marks and with marks that are well known internationally and/or in the Philippines.

Marks that are wholly descriptive, consist of the shape of a good or comprise of a colour may be registered if they become distinctive in connection with the applicant's goods and/or services as a result of extensive commercial use in the Philippines for at least five years before the claim of distinctiveness is made.

In order to apply for the registration of a trademark, a completed application form should be submitted to the IPOPHL, accompanied by a reproduction of the mark applied for. The reproduction of the mark may be in printed or electronic form, which should be in .jpg file format. A POA is needed for an application to proceed to substantive examination, but its submission is not required for an application to be issued with a filing number and filing date. The submission of a scanned POA is sufficient. The POA does not need to be attested, notarised, legalised, authenticated or apostilled. Trademark applications may be submitted in printed form or through electronic filing using the eTMfile system of the IPOPHL.

Upon the completion of the formal requirements for a trademark application, the application undergoes substantive examination, where the examiner determines the registrability of the trademark based on section 123 of the Intellectual Property Code. If there are no objections from the IPOPHL regarding the registrability of the applied-for trademark, a Notice of Allowance is issued requiring the applicant to pay the publication for opposition fee. The applicant may simultaneously pay the issuance of certificate and a second publication fee alongside the publication for opposition fee to expedite the registration. Once the publication fee is paid, the trademark will then be published in the IPOPHL e-Gazette for third-party oppositions. If no opposition to the registration of the mark is filed within 30 days from its publication, the mark shall be deemed registered on the day following the expiration of the 30-day period. A trademark registration is valid for ten years from the date of registration.

Unlike in other countries, use of a trademark is not a prerequisite for its registration in the Philippines, but use is required to maintain the application or registration of a mark, whether for national applications or international registrations via the Madrid Protocol. Trademark use is supported through the submission of a Declaration of Actual Use (DAU) within:

- three years from the filing date, international registration date or date of subsequent designation;
- one year following the fifth anniversary of the date of registration or date of grant of protection;
- one year from the date of renewal; or
- one year from the fifth anniversary of each renewal.

The DAU should be accompanied by any of the acceptable proofs of use listed in Rule 210 of the Philippine Trademark Regulations, 2017.

Failure to file the DAU and proofs of use within any of the specified periods will mean the automatic refusal of an application or the cancellation of a registration. Unjustified non-use of a registered mark for an uninterrupted period of three years may also be the basis of a cancellation action.

In lieu of the DAU, an applicant or registrant may file a declaration of non-use (DNU) if non-use of the mark is based on any of the following circumstances outside the owner's control, except for a lack of funds:

- where the registrant or applicant is prohibited from using the mark in commerce because of a requirement imposed by another government agency before placing the goods in the market or rendering services;
- where a restraining order or injunction was issued by the Bureau of Legal Affairs, the courts or quasi-judicial bodies prohibiting the use of the mark; or
- where the mark is the subject of an opposition or cancellation case.

Generally, the DNU may be submitted only in lieu of the third-year DAU. However, if the use of a mark has been interrupted or discontinued pending litigation, a DNU may be submitted instead of the relevant DAU.

9.3 Copyright

The Intellectual Property Code also provides for copyright protection over original intellectual creations in the literary and artistic domain. Copyright over such work exists from the moment of its creation, without need for registration.

Apart from the Intellectual Property Code, the following international treaties/conventions in relation to the protection of copyright and other related rights also apply to copyrighted subject matter in the Philippines:

- the Berne Convention for the Protection of Literary and Artistic Works;
- the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations;
- the TRIPS Agreement;
- the WIPO Performances and Phonograms Treaty, 2002; and
- the WIPO Copyright Treaty;

Copyrightable works may be registered and deposited with the Copyright Division of the National Library of the Philippines, the Supreme Court Library (only with respect to works in the field of law), and the Bureau of Copyright and Other Related Rights, as deputised by the National Library. Since registration is not a prerequisite for copyright protection, the purpose of the registration and deposit is only to complete the records of the National Library and the Supreme Court Library. Deposited works are considered to be public records and are open to public inspection, subject to safeguards that may be issued by the National Library.

In the Philippines ideas, procedures, systems, methods or operations, concepts, principles, discoveries or mere data as such are not subject to copyright protection, even if they are expressed, explained, illustrated or embodied in a work. News of the day and other miscellaneous facts having the character of press information, as well as any official text of a legislative, administrative or legal nature, and the legal translations thereof, are also not protected under copyright.

It is important to note that only a natural person may be considered as an author or the original creator of a copyrightable work. While a corporation cannot be considered as an author of a work, copyright over a work may be transferred to the juridical entity by assignment.

With respect to works created in the course of employment, copyright belongs to the employee if the work is not part of his or her regular duties, even if the author uses the time, facilities and materials of the employer. On the other hand, if the work is the result of the performance of the author's regularly assigned duties, the employer owns the copyright, unless there is an express or implied agreement to the contrary.

If the work is commissioned outside of an employer–employee relationship (ie, consultancy or freelance), the copyright is owned by the author although the work itself is owned by the person who commissioned and paid for it, unless there is a written stipulation to the contrary.

The copyright owner's rights under section 177 (Economic Rights) of the Intellectual Property Code are transmissible. To be valid, the assignment or licensing of a copyright must be in writing and should appear in a public instrument in order to be effective against third parties. The rights under section 193 (Moral Rights) of the Intellectual Property Code are not transmissible. However, these rights may be waived by a written instrument subject to statutory limitations.

9.4 Designs

The protection of industrial designs in the Philippines falls under the regime of patents. However, the only substantive requirement for the grant of an industrial design patent is novelty. Industrial designs may also be copyrighted if they satisfy the original and artistic requirements for copyright protection.

The process for a grant of an industrial design is the same as that for a utility model (see 9.2 above).

Industrial designs have a term of protection of five years from the filing date of the application and may be renewed for no more than two consecutive five-year terms.

Chapter 10: Financing

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10.1 Modes of entry for foreign banks

Under Republic Act No 10641, the Monetary Board may authorise foreign banks to operate in the Philippine banking system through any of the following modes of entry:

- by acquiring, purchasing or owning up to 100 per cent of the voting stock of an existing bank;
- by investing in up to 100 per cent of the voting stock of a new banking subsidiary incorporated under the laws of the Philippines; or
- by establishing branches with full banking authority.

10.2 Qualification and minimum capital requirement for foreign banks

A foreign bank that intends to operate in the Philippines must be:

- widely owned and publicly listed in the country of origin, unless the foreign bank applicant is owned and controlled by the government of its country of origin; and
- established, reputable and financially sound.

If a foreign bank is owned and controlled by a holding company, the aforementioned requirement may apply to the holding company.

Moreover, the BSP will also consider the following factors in selecting the foreign banks allowed to enter the Philippine banking system:

- geographic representation and complementation;
- strategic trade and investment relationships between the Philippines and the home country of the foreign bank;
- relationship between the applicant bank and the Philippines;
- demonstrated capacity, global reputation for financial innovations and stability in the competitive environment of the applicant bank;
- reciprocity rights enjoyed by Philippine banks in the applicant's country; and
- willingness fully to share banking technology.

The subsidiary or branch of a foreign bank is also required to comply with the minimum capital requirements applicable to a domestic bank in the same category.

10.3 Qualifications of subscribers/directors/officers of banks

All the incorporators, subscribers, directors and officers of the bank, present or proposed, must have the following qualifications:

- be persons of integrity and of good credit standing in the business community;
- have adequate financial strength to pay the proposed subscription in the bank;
- not have been convicted of any crime involving moral turpitude, and unless otherwise allowed under provisions of law, not be officers or employees of government agencies, instrumentalities, departments or offices charged with the supervision or granting of loans to banks;
- not be an appointive or elective public official, full or part-time, and at the same time serving as an officer of a bank, except when such service is incidental to the financial assistance provided by the government or a government-owned or controlled corporation to the bank, or except in cases allowed under existing laws;
- hold the qualifications provided in the Manual of Regulations for Banks; and
- hold none of the disqualifications prescribed under the Manual of Regulations for Banks.

10.4 Registration of direct foreign equity investment in a domestic corporation

Inward foreign investment must be registered with the BSP within one year from the date of inward remittance (if in cash) or from the date of the actual transfer of assets to the Philippines (if in kind) if the foreign investor intends to source the foreign exchange requirement needed to service the repatriation of capital and remittance of cash dividends/profits/earnings accruing on foreign investment from the Philippine banking system (ie, authorised agent banks or their affiliate/subsidiary foreign exchange corporations).

Without the required BSP registration, the foreign investor may source foreign exchange from internally generated revenue or from outside the Philippine banking system, such as foreign exchange dealers, money changers and remittance agents.

The registration of inward investment shall be supported by: (1) proof of funding; and (2) proof of an actual investment made by the non-resident investor.

After complying with the requirements to register the inward remittance, a Bangko Sentral Registration Document is issued in the name of the domestic corporation.

10.5 Registration of foreign loans

Foreign loans must be registered with the BSP if the company intends to source foreign currency from the Philippine banking system in connection with the repayment of the principal amount or the interest of the foreign loan.

Without the required BSP registration, the borrower may still source foreign exchange from internally generated revenue or from outside the Philippine banking system, such as foreign exchange dealers, money changers and remittance agents.

In order to register a private-sector foreign loan, the borrower must:

- submit a notice to the BSP supported with a copy of the signed covering agreement(s), within one month from the date of signing (the ‘Notice’);
- send a notification to the BSP for: (1) any changes in the loan’s financial terms and conditions; or (2) cancellation (whether partial or in full) of the loan/commitment/agreement, within 15 banking days from the availability of information/signing of the amended or supplemental agreement/effectivity date, as the case may be, for monitoring purposes;
- apply for loan registration with the BSP within one month from drawdown date (for short-term loans) and within six months from utilisation of proceeds (for medium and long-term loans) (the ‘Application for Loan Registration’); and
- a foreign borrowings plan for medium and long-term loans.

In the event that the signing date and drawdown occur simultaneously, the Notice and the Application for Loan Registration may be filed simultaneously.

After complying with the requirements to register the loan, a Bangko Sentral Registration Document is issued in the name of the domestic corporation.

Chapter 11: Privacy laws and data protection

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The Data Privacy Act, 2012 is the primary law governing the protection and processing of personal data in the Philippines. Personal data refers to all types of personal information. Personal information refers to any information, whether recorded in a material form or not, from which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information, would directly and certainly identify an individual. Personal data is classified as *sensitive* personal information when it refers to personal information: (1) about an individual's race, ethnic origin, marital status, age, colour, or religious, philosophical or political affiliations; (2) about an individual's health, education, genetic or sexual life, or to any proceeding for any offence committed or alleged to have been committed by such an individual, the disposal of such proceedings or the sentence of any court in such proceedings; (3) issued by government agencies peculiar to an individual, which includes, but is not limited to, social security numbers, previous or current health records, licences or their denial, suspension or revocation, and tax returns; or (4) specifically established by an executive order or an act of Congress to be kept classified. Processing, meanwhile, refers to any operation or any set of operations performed upon personal data including, but not limited to, the collection, recording, organisation, storage, updating or modification, retrieval, consultation, use, consolidation, blocking, erasure or destruction of such data.

11.1 Registration of data processing systems

Personal information controllers (PICs) and personal information processors (PIPs) with fewer than 250 employees are not required to register their data processing systems, unless the processing carried out is likely to pose a risk to the rights and freedoms of data subjects, is not occasional or includes sensitive personal information of at least 1,000 individuals. Processing of personal data will not be considered occasional if processing constitutes a core activity of the PIC or PIP. Processing operations that pose a risk to data subjects are those involving information that would be likely to affect national security, public safety, public order or public health; information required by applicable laws or rules to be confidential; vulnerable data subjects (eg, minors, the mentally ill, asylum seekers and elderly patients); automated decision-making; or profiling.

The National Privacy Commission (NPC) has identified the processing of personal data by the following sectors or institutions as either likely to pose a risk to the rights and freedoms of data subjects or not occasional:

- telecommunications networks, internet service providers and other entities or organisations providing similar services;
- business process outsourcing companies;

- universities, colleges and other institutions of higher learning, alongside all other schools and training institutions;
- hospitals, including primary care facilities, multi-specialty clinics, custodial care facilities, diagnostic or therapeutic facilities, specialised outpatient facilities and other organisations processing genetic data;
- providers of insurance undertakings, including life and non-life companies, pre-need companies and insurance brokers;
- bank and non-bank financial institutions;
- businesses involved mainly in direct marketing and networking, and companies providing reward cards and loyalty programmes;
- pharmaceutical companies engaged in R&D;
- PIPs processing personal data for a PIC included in the preceding items and data processing systems involving automated decision-making; and
- government branches, bodies or entities, including the national government, agencies, bureaus or offices, constitutional commissions, local government units, and government-owned and controlled corporations.

Automated decision-making refers to wholly or partially automated decision-making processes that significantly affect the data subject. This includes profiling based on socio-economic situation, political or religious beliefs, behavioural or marketing activities, electronic communication data and financial data.

PIC and PIP registration with the NPC is completed in two phases. Phase I involves the appointment of the PIC or PIP's data protection officer and the notification of the NPC of such an appointment. Under Phase II, the data protection officer shall provide all relevant information regarding its data processing systems through the NPC online registration system, such as:

- purpose and mandate of the entity;
- all existing policies relating to data governance, data privacy and information security;
- data processing certifications attained by the PIC or PIP, including personnel;
- description of the data processing systems, including the name of the system; purposes or purposes of processing; whether processing is done as PIC, PIP or both; whether the system is outsourced or subcontracted; categories of data subjects and their personal data or categories thereof; recipients or categories of recipients to whom the personal data might be disclosed; and whether personal data is transferred outside the Philippines; and
- notification regarding any automated decision-making operation.

11.2 Notification of a personal data breach

The Data Protection Act defines a personal data breach as a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed. A personal data breach may be in the nature of: (1) an availability breach resulting from the loss or accidental or unlawful destruction of personal data; (2) an integrity breach resulting from the alteration of personal data; and/or (3) a confidentiality breach resulting from the unauthorised disclosure of or access to personal data.

Notification to the NPC shall be required upon knowledge of or when there is reasonable belief by the PIC that a personal data breach requiring notification has occurred, under the following conditions:

- the personal data involves sensitive personal information or any other information that may be used to enable identity fraud; for this purpose, 'other information' shall include, but not be limited to: data about the financial or economic situation of the data subject; usernames, passwords and other login data; biometric data; copies of identification documents, licences or unique identifiers like a PhilHealth number, Social Security System number, Government Service Insurance System number or Tax Identification Number; or other similar information, that may be made the basis of decisions concerning the data subject, including the grant of rights or benefits;
- there is reason to believe that the information may have been acquired by an unauthorised person; and
- the PIC or the NPC believes that the unauthorised acquisition is likely to give rise to a real risk of serious harm to any affected data subject.

The PIC must notify the NPC, in instances when this is required, within 72 hours upon knowledge of or the reasonable belief by the PIC that a personal data breach has occurred. Notification may only be delayed to the extent necessary to determine the scope of the breach, to prevent further disclosure or to restore reasonable integrity to the information and communications system. The PIC need not be absolutely certain of the scope of the breach prior to notification. Its inability immediately to secure or restore integrity to the information and communications system shall not be a ground for any delay in notification if such a delay would be prejudicial to the rights of the data subjects. Delay in notification shall not be excused if it is used to perpetuate fraud or to conceal the personal data breach.

Failure to notify shall be presumed if the NPC does not receive notification from the PIC within five days from the knowledge of or upon a reasonable belief that a personal data breach occurred. There shall be no delay in the notification if the breach involves at least 100 data subjects, or the disclosure of sensitive personal information will harm or adversely affect the data subject. In both instances, the NPC shall be notified within the 72-hour period based on available information. A full report of the personal data breach must be submitted within five days, unless the PIC is granted additional time by the NPC to comply.

Chapter 12: Competition law

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The Philippine Competition Act generally prohibits three practices: (1) anti-competitive agreements; (2) abuse of a dominant position; and (3) anti-competitive mergers.

12.1 Prohibited activities

12.1.1 Anti-competitive agreements

Prohibited anti-competitive agreements can be classified into the following:

- hardcore cartel agreements, price-fixing agreements and bid manipulation agreements between or among competitors, which are per se prohibited;
- agreements among competitors that have the object or effect of substantially preventing, restricting or lessening competition by: (1) setting, limiting or controlling production, markets, technical development or investment; or (2) dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers or any other means; and
- other agreements that have the object or effect of substantially preventing, restricting or lessening competition.

12.1.2 Abuse of a dominant position

An entity is considered dominant if it enjoys a position of economic strength that allows it to control the relevant market independently from its competitors, customers, suppliers or consumers. The Philippine Competition Commission (the 'Commission') can also consider other factors in evaluating whether an entity is dominant, and there is a rebuttable presumption of market dominance if the market share of an entity in the relevant market is at least 50 per cent or such other threshold that may be set by the Commission.

When an entity is deemed to be dominant, its performance of certain acts will be considered an abuse of such a dominant position and could subject the entity to penalties. Examples of an abuse of a dominant position include:

- predatory pricing;
- imposing barriers to entry or barriers to growth;
- imposing tying or bundling obligations in transactions;
- discriminating on pricing and terms and conditions;
- imposing unfair prices; and
- limitation of markets, production or technical development.

12.2 Consequences of a breach

The entry into prohibited anti-competitive agreements and the commission of abuses of dominant position have severe consequences.

12.2.1 Remedies

The Commission may issue injunctions, require divestment and require disgorgement of excess profits.

12.2.2 Administrative fines

The Commission may impose administrative fines of up to PHP 100m for the first offence, and between PHP 100m and PHP 250m for the second offence on entities found to have entered into prohibited anti-competitive agreements or committed abuses of a dominant position.

12.2.3 Criminal penalties

Fines of between PHP 50m and PHP 250m may be imposed by the courts on entities that enter into those defined anti-competitive agreements between competitors that are either prohibited per se or that have the object of substantially preventing, restricting or lessening competition by setting, limiting or controlling production, markets, technical development or investment, or by dividing or sharing the market. Directors and management personnel of such entities who knowingly and wilfully participated in the criminal offences may be sentenced to imprisonment for two to seven years.

Treble damages may be imposed by the Commission or courts, as the case may be, where the violation involves the trade or movement of basic necessities and prime commodities.

12.3 Pre-merger and pre-acquisition notification

The Philippine Competition Act imposes mandatory notification requirements on covered transactions. Parties to a transaction will be prohibited from closing until the transaction is cleared by the Commission or the lapse of 30 days from the date that substantive review (or Phase 1 review) of the transaction commenced, if no action is taken by the Commission. Within the 30-day period, the Commission can request additional information on the transaction, and such a request will have the effect of triggering a Phase 2 review and extending the review period by 60 days, but in no case will the review period exceed 90 days from commencement of the Phase 1 review unless the statutory periods are waived by the parties.

If the Commission determines that the M&A agreement will have an anti-competitive effect, it may outrightly prohibit the implementation of the agreement; prohibit the implementation of the agreement unless modifications are made to its terms; or prohibit the implementation of the agreement unless the relevant parties enter into other agreements.

Non-compliance with the notification requirement will result in the imposition of a fine of between one and five per cent of the value of the transaction, in addition to the agreement being deemed void.

Chapter 13: Dispute resolution

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13.1 Structure of the courts

The Philippine judiciary consists of a hierarchy of courts, with the Supreme Court at the top tier, exercising administrative supervision over all courts and court personnel.

The Supreme Court has both original and appellate jurisdiction. It exercises original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto* and *habeas corpus*. It also has original jurisdiction over writs of *amparo*, *habeas data a*nd the environmental writ of *kalikasan*. It exercises appellate jurisdiction to review, revise, reverse, modify or affirm final judgments and orders of the lower courts in:

- all cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance or regulation is in question;
- all cases involving the legality of any tax, impost, assessment or toll, or any penalty imposed in relation thereto;
- all cases in which the jurisdiction of any lower court is in issue;
- all criminal cases in which the penalty imposed is *reclusiónperpetua* or higher; and
- all cases in which only an error or question of law is involved.

In the next tier below the Supreme Court are three collegiate courts: the Court of Appeal, the Court of Tax Appeals and the Sandiganbayan.

The Court of Appeals is the primary appellate court of the Philippines, sitting in three stations: the City of Manila, Cebu and Cagayan de Oro. It is assigned to review cases elevated to it from the Regional Trial Courts (RTCs), as well as quasi-judicial agencies, such as the Civil Service Commission, SEC, National Labor Relations Commission and Land Registration Authority. The Court of Appeals also reviews cases where the sentence is *reclusión perpetua* or life imprisonment, as well as decisions of the Office of the Ombudsman in administrative disciplinary cases.

The Court of Tax Appeals is a special collegiate court with exclusive jurisdiction to review appeal decisions in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto or other matters arising under the National Internal Revenue Code. It also exercises original jurisdiction over all criminal offences arising from violations of the Tax or Tariff Codes and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs.

The Sandiganbayan is an anti-graft court with jurisdiction to try public officers with a salary grade of 27 and above charged with criminal cases involving the violation of the country's laws on graft and corruption and corresponding civil cases for the recovery of civil liability arising from the offence. Likewise, the Sandiganbayan is vested with appellate jurisdiction over final judgments, resolutions or orders of the RTCs in the exercise of their original or appellate jurisdiction over crimes and civil cases falling within the original exclusive jurisdiction of the Sandiganbayan, but which were committed by public officers below a salary grade of 27.

The next tier consists of the RTCs, which have both original and appellate jurisdiction. In exercising the former jurisdiction, RTCs act as trial courts, receiving evidence in the first instance from the parties to a case falling within its jurisdiction. In exercising the latter jurisdiction, the RTCs act as a court of appeal over the decisions of the first-level courts.

Finally, the lowest tier consists of the Metropolitan Trial Courts, which are established in Metropolitan Manila; the Municipal Trial Courts in Cities, in every city that does not form part of Metropolitan Manila; the Municipal Trial Courts, established in municipalities; and Municipal Circuit Trial Courts, created in each circuit comprising such cities and/or municipalities as grouped by law.

13.2 Arbitration

Arbitration is expressly sanctioned by law as an alternative mode of dispute resolution. Congress enacted Republic Act No 9285, also known as the ADR Act, 2004, which provided the much-needed legislation to institutionalise arbitration in the Philippines. The ADR Act addressed most of the inadequacies of its predecessor, Republic Act No 876. The ADR Act governs both domestic and international commercial arbitration, and has adopted the 1985 UNCITRAL Model Law as a complement to the earlier accession of the Philippines to the New York Convention on 19 June 1958, which the Philippines ratified on 6 July 1967.

The Supreme Court issued Administrative Matter No 076-11-08-SC, on 1 September 2009, also known as the Special Rules of Court on ADR, which provided for the procedural guidelines for both domestic and international arbitration, as well as the enforcement of arbitral awards in the Philippines.

13.3 Other forms of dispute resolution

In addition to arbitration, the other modes of dispute resolution provided for under the ADR Act are mediation, early neutral evaluation, mini-trial, mediation arbitration or any combination thereof.

Mediation is defined as a voluntary process in which a mediator, selected by the disputing parties, facilitates communication and negotiation, and assists the parties in reaching a voluntary agreement regarding a dispute.

'Early neutral evaluation' means an ADR process wherein parties and their lawyers are brought together early in the pre-trial phase to present summaries of their cases and to receive a non-binding assessment by an experienced neutral person, with expertise in the subject matter or substance of the dispute.

'Mini-trial' means a structured dispute resolution method in which the merits of a case are argued before a panel comprising senior decision-makers, with or without the presence of a neutral third person, before which the parties seek a negotiated settlement.

'Mediation-arbitration' is a two-step dispute resolution process involving mediation followed by arbitration.

Chapter 14: Other

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14.1 Regulation of payment systems

A payment system provides a channel for the transfer of funds among banks and other institutions to discharge obligations arising from economic and financial transactions to reduce the cost of exchanging goods and services. Republic Act No 11127, otherwise known as the National Payment Systems Act, grants the BSP authority over the maintenance of a safe, efficient and reliable payment system. The law requires the registration of payment system operators with the BSP and for said operators to incorporate as stock corporations. By way of exception, those operated by the BSP shall not be required to do so. Payment systems operators must first secure a certificate of authority to register from the Monetary Board before seeking registration to do business in the Philippines from the SEC. Acting as an operator without the requisite authority from the BSP may open a participant of a designated payment system, its directors and officers to fines not exceeding PHP 1m for each transactional violation or PHP 100,000 per day for each continuing violation. Should any profit be gained or any loss avoided by reason thereof, an additional fine of no less than the amount of profit gained or loss avoided, but not more than three times the profit gained or loss avoided, may be imposed.

14.2 Ease of doing business

Republic Act No 11032, otherwise known as the Ease of Doing Business Act, mandates all government offices and agencies including local government units and other government corporations, agencies and instrumentalities to reengineer their systems and procedures to reduce bureaucratic red tape and processing time.

The processing of applications for government-issued documents must be acted upon within the prescribed processing time stated in the Citizen's Charters to be enacted by government offices, which should be no longer than: (1) three days for simple transactions; (2) seven days for complex transactions; and (3) 20 days for highly technical transactions. During the processing period, government officers or employees should have no contact with the applicant unless necessary. The Ease of Doing Business Act limits the signatories of any document to a maximum of three signatures representing officers directly supervising the office or agency and requires an explanation in writing for any denial of application or request for access by the citizens. To ensure the efficiency and reliability of the system, all heads of offices or agencies are responsible for the implementation of the law.

14.3 Regulations on exports and imports

The Bureau of Customs administers the provisions of Republic Act No 10863 or the Customs Modernisation and Tariff Act (CMTA) and exercises supervision and control on all Philippine import and export activities. All goods imported into the Philippines are subject to duty and tax upon importation, except those that the CMTA expressly excludes. Under the CMTA, importation begins when the carrying vessel or aircraft enters Philippine territory with the intent to unload therein.

All imported goods are subject to a lodgement of goods declaration. The two types of goods declaration are: (1) informal entry, which covers goods of a commercial nature with free on board or free carrier value of less than PHP 50,000 and personal and household effects or goods, not in commercial quantity; and (2) formal entry, which covers goods of a commercial nature with free on board or free carrier value of not less than PHP 50,000. Within 15 days from the date of discharge of the last package from the vessel or aircraft, a goods declaration must be lodged. This period within which to file a declaration may be extended for another 15 days, filed prior to the expiration of the original period, only on valid grounds. Failure to lodge the goods declaration constitutes an implied abandonment of goods.

Goods classified by the Department of Trade and Industry (DTI) requiring mandatory product certification must secure an Import Commodity Clearance prior to sale of the goods imported.

For exportation, after securing the necessary registrations with the DTI, SEC or Cooperative Development Authority, an exporter should utilise the Client Profile Registration System of the Bureau of Customs. Registration should be made with the DTI if accredited under the Export Development Act or a coffee exporter; with the BOI if registered therewith; or with the PEZA if located in an area governed by the PEZA.

Depending on the products to be exported, additional permission by way of an Export Clearance is required from various government agencies concerned, such as:

- Bureau of Animal Industry for animals and animal products;
- Food and Drug Administration for food, drugs, cosmetics, toys and device products;
- National Food Authority for rice;
- National Museum for artwork more than 100 years old; and
- Sugar Regulatory Administration for sugar and molasses.

Meanwhile, businesses operating within SEZs or Freeport Zones are exempt from paying taxes and tariffs on imported raw materials and manufacturing equipment in the main SEZs, such as the Clark SEZ, Subic SEZ and John Hay SEZ.

14.4 Money laundering compliance

The Anti-Money Laundering Act, 2001 (AMLA), as amended, requires covered persons to comply with reportorial requirements imposed by the Anti-Money Laundering Council, specifically with regard to covered and suspicious transactions that may signal acts of money laundering. ‘Covered persons’ broadly include natural and juridical persons supervised and regulated by the BSP, Insurance Commission and SEC. Also covered are Designated Non-Financial Business and Professions, which include jewellery dealers in precious metals and stones, in addition to company service providers and persons engaged in the management of client money and finances, including lawyers, accountants and other professionals.

‘Covered transactions’ refer to: (1) those transactions in cash or other equivalent monetary instrument involving a total amount in excess of PHP 500,000 within one banking day; (2) a transaction with or involving jewellery dealers, dealers in precious metals and dealers in precious stones in cash or other equivalent monetary instrument exceeding PHP 1m; and (3) a casino cash transaction exceeding PHP 5m or its equivalent in other currency. ‘Suspicious transactions’, meanwhile, are transactions with covered institutions, regardless of the amounts involved, where any of the following suspicious circumstances exist:

- there is no underlying legal or trade obligation, purpose or economic justification;
- the client is not properly identified;
- the amount involved is not commensurate with the business or financial capacity of the client;
- taking into account all known circumstances, it may be perceived that the client’s transaction is structured in order to avoid being the subject of reporting requirements under the AMLA;
- any circumstance relating to the transaction that is observed to deviate from the profile of the client and/or the client’s past transactions with the covered institution;
- the transaction is in any way related to an unlawful activity or offence under the AMLA that is about to be, is being or has been committed; or
- any transaction that is similar or analogous to any of the foregoing.

Notwithstanding the provisions of Republic Act No 1405, or the Bank Secrecy Law, and other regulations, the Anti Money Laundering Council is granted the power to inquire into or examine any particular deposit or investment, including related accounts, with any banking institution or non-bank financial institution upon the order of any competent court based on an *ex parte* application in cases of violations of the AMLA. An inquiry occurs when it has been established that there is probable cause that the subject funds are related to an unlawful activity or a money laundering offence.